

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Charles Stewart

TIRC Claim No. 2014.244-S
(Relates to Cook County Circuit
Court Case No. 94-CR-8733)

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(c), the Illinois Torture Inquiry and Relief Commission ("TIRC" or "Commission" hereinafter) concludes that, by a preponderance of the evidence, there is not sufficient evidence of torture to merit judicial review. This determination is based upon the Factual Findings and Analysis set forth below, and the supporting record attached.

Executive Summary

Charles Stewart was convicted in 1995 for the murder of Stephen Green and sentenced to seventy years in prison. He did not allege coercion prior to trial or in post-conviction filings afterwards. He claimed in filings with TIRC that the confession attributed to him was the product of police torture and was used to convict him. *See* EXHIBIT 1.¹ The State successfully argued at trial that Stephen Green was murdered as part of a gang "violation," or "punishment" of one of its members. Numerous gang members purportedly participated in the violation, many of whom were also convicted at the same time as Stewart or in subsequent trials. Stewart's confession was one of the primary pieces of evidence used to convict him. The other primary evidence was the witness testimony of ASA Moran, who read into evidence the Grand Jury testimony of eyewitness Sheila Crosby.

The factors weighing in favor and against referral are summarized below. There are reasons to doubt the credibility of both Stewart and the officers who Stewart has claimed tortured him. Overall, due to the lack of physical evidence of abuse combined with the lack of any documented allegations of abuse by Stewart until recently, the Commission votes not to refer Stewart's claim.

a. Factors Supporting Claim of Torture:

- i. Claims of police coercion by witnesses Sheila Crosby and Eugene Bradford
- ii. Extensive pattern and practice evidence of allegations of abuse and flawed credibility against detectives involved
- iii. Stewart's trial testimony regarding his warrantless arrest
- iv. Claims of coercion by a co-defendant

¹ *See also* EXHIBIT 19, Correspondence of Charles Stewart to TIRC dated May 14, 2014.

b. Factors Detracting from Claim of Torture:

- i. Lack of documented claims of torture by Stewart until recently
- ii. Lack of physical evidence of torture
- iii. Inconsistent statements made by the above-mentioned witnesses Sheila Crosby and Eugene Bradford
- iv. Inconsistent statements made by claimant Stewart damage his credibility
- v. Testimony at trial and information in police reports about witness intimidation and violence against witnesses make witness recantations and claims of police coercion less trustworthy
- vi. Stewart's trial attorney's belief that Stewart was abused is not supported by any specific memories of Stewart alleging abuse

Factual Findings

A. Summation of the Underlying Crime

Stephen Green, born January 7, 1958, was left at Chicago Osteopathic Hospital several minutes before 7:00 p.m. on January 23, 1994 with severe injuries caused by a beating.² He died from his injuries later that evening. The prosecution successfully argued that Stephen Green died as a result of a beating by a group of Black Disciples ("B.D.'s") during a "violation" that took place in the apartment of Sheila Crosby at 4555 South Federal. Around 5:00 to 6:00 p.m. on January 23, 1994, B.D. leaders called a meeting of 20 to 40 B.D. members for the purpose of punishing Green, one of its members.³ The leaders questioned Green about missing cocaine, and subsequently instructed the other members to beat Green. He was punched, kicked, and beaten with a wooden object.⁴ Stephen Green, Charles Stewart, Sheila Crosby, and other alleged B.D. members all lived at the 4555 South Federal apartments.

The prosecution argued that Stewart was a B.D., and that he participated in the punishment. At trial, Stewart denied attending any gang meetings or being present at Green's beating. A number of other B.D. members were tried and convicted for the murder of Stephen Green.⁵

B. State's Version of Events

Detective Kenneth Boudreau testified that after 10 p.m. on January 23, 1994, he and his partner John Halloran went to the Chicago Osteopathic Hospital to investigate Green's beating, and then proceeded to 4555 South Federal to speak with Green's wife. Boudreau testified he saw a man in the lobby of the building, who he later identified as Stewart, running away from him

² *People v. Stewart*, ROP 5/16/1995 at AA40.

³ *People v. Stewart*, ROP 5/11/1995 (Vol. I) at A10.

⁴ Police reports indicate that numerous B.D. members placed Stewart at the purported violation. At trial, the only testimony that identified Stewart as participating in the violation was grand jury testimony of Sheila Crosby that was brought in via impeachment. *People v. Stewart*, ROP 5/11/1995 (Vol. I) at A134 – A136.

⁵ Co-defendants: Shondell Walker (convicted on November 21, 1995) and Anthony Horton (convicted on June 1, 1995). Other arrests: Anthony Jaynes (convicted of first degree murder) and Deshawn Gardner (convicted of first degree murder). Tried and unknown outcome: Delaney Epps, Kenneth Woods, Willie Anderson, and Parnell Brown.

and Halloran.⁶ On January 24th, two different detectives were on duty for most of the day, and continued the investigation. Detective Daniel McDonald testified that Chicago Housing Authority security received an anonymous phone call around 2 p.m., instructing them to look for a piece of wood related to the beatings in the basement of 4555 South Federal, and that he and Detective Sergio Rajkovich found a table leg with blood on it at that location.⁷ The CPD reports indicated that the tip also mentioned that someone named “Charlie” was one of the offenders.⁸ It is unclear how the detectives came to know how to find “Charlie.” McDonald and Rajkovich went to 4555 South Federal to find the wood, and picked up Stewart sometime after 2:00 p.m.⁹

McDonald testified that Stewart agreed to come to Area 1 to discuss the crime¹⁰ Eight officers were listed in the arrest report. McDonald testified that Stewart dressed himself during the event.¹¹

In the late afternoon of January 24th, Stewart was brought to a second floor interview room at Area 1. Police reports indicate that initially, Stewart told officers that he discovered Green alone in an elevator and assisted two other individuals in bringing him to a car.¹² McDonald testified at trial that he noticed what appeared to be blood on Stewart’s jacket and on one shoe and had the garments taken into evidence.¹³ The substance later tested positive as human blood, but apparently was not compared to Green’s blood.¹⁴

Boudreau’s shift resumed around 4:30 p.m. on the 24th. Boudreau claimed that Stewart was cooperating when he arrived at the station. It’s unclear what the extent of the conversation between McDonald and Stewart had been when Boudreau arrived back at Area 1.¹⁵ Boudreau testified that he interviewed Stewart for one hour at around 6:00 p.m.¹⁶ During this interview he claimed to have learned that the beating took place in Apartment 1308 at 4555 South Federal. CPD reports indicate that when the detectives informed Stewart that they recognized him as the man that fled from them the previous night, Stewart admitted to being at, but not participating in, the beating. Contemporaneous police reports do not indicate Stewart admitted, at this point in the interrogation, to participating in the beating.¹⁷

⁶ *People v. Stewart*, ROP 5/17/1995 at B61-B66.

⁷ *Id.* at B42.

⁸ See EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report at 12; see also *People v. Stewart*, ROP 5/17/1995 at B44.

⁹ *People v. Stewart*, ROP 5/17/1995 at B43.

¹⁰ *People v. Stewart*, ROP 5/17/1995 at B48. CPD reports claim the formal arrest occurred on January 25th at 12:00a.m. at the police station. See EXHIBIT 2 Closing Report of J. Halloran January 30, 1994, CPD Report at 5. The report states that Anthony Horton was arrested at 4:30 a.m. and Shondell Walker at 7:30 a.m. on January 25. *Id.*

¹¹ *People v. Stewart*, ROP 5/17/1995 at B48.

¹² EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report at 13.

¹³ *People v. Stewart*, ROP 5/17/1995 at B49.

¹⁴ See *People v. Stewart*, ROP 5/18/1995 at D3-D5; see also ROP 5/17/1995 at B112-B113.

¹⁵ *People v. Stewart*, ROP 5/17/1995 at B68.

¹⁶ *Id.*

¹⁷ See EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report at 14.

At around 11:55 p.m., Officers John Butler and Joseph Moran went to Apartment 1308, meeting Halloran and Boudreau there. Butler testified that the residents of 1308, Sheila Crosby and Eugene Bradford, were not in the unit when they arrived there.¹⁸

Stewart was still being held when Halloran and Boudreau brought Crosby and Bradford to Area 1 shortly after midnight of January 25th.¹⁹ Police reports indicate Crosby told police she saw Stewart participate in the beating and that B.D. gang leaders threatened to kill her and her five children if she talked to police.²⁰ Crosby also testified before the grand jury to Stewart's involvement in the beating. Det. Boudreau additionally testified at trial that he arranged to relocate Crosby and Bradford for their protection from gang members.²¹ The officers documented in their notes that after being confronted with Crosby's and Bradford's accounts, Stewart admitted to being in the B.D.'s and to participating in the beating.²² Early on the morning of the 25th, co-defendant Anthony Horton was brought to Area 1.²³ Police reports claimed that Horton placed Stewart at the beating.²⁴ Police then brought Shondell Walker to Area 1; he also said that Stewart participated in the beating, police reports state.²⁵

ASA Michael Latz testified he interviewed Stewart at 10:00 a.m. on January 25th for 45 minutes with Boudreau present.²⁶ This interview is not documented in CPD reports, and Latz testified he did not believe Stewart had made a statement to police before this interview.²⁷ During the 10 a.m. conversation, Stewart admitted to participating in the beating, Latz testified²⁸, but Latz did not note that admission in his notes documenting the interview.²⁹ Sometime after 3:30 p.m., Latz testified, with Boudreau and Halloran present, Latz outlined options for recording Stewart's statement. Latz asked Boudreau to leave, and questioned Stewart as to his treatment, and was told no threats or promises had been made, Latz testified. Latz called Boudreau back in, and around 4 p.m., Stewart purportedly gave a statement that implicated himself in the murder of Green, Latz testified.³⁰ Latz testified the 10 a.m. statement was not substantially the same as the written statement given at 4 p.m.,³¹ but cross-examination failed to elicit the differences between the two statements.

In the signed statement, Stewart implicated ten other B.D. members by name, but indicated that about 40 participated in the violation. *See* EXHIBIT 4. The statement said that he and another B.D. were sent by J.D., the leader of the gang, to get a bat or club with which to beat Green. The statement described some of the individuals who took turns beating Green and indicted that Stewart personally held Green up so that others could hit him, and that Stewart

¹⁸ *People v. Stewart*, ROP 5/17/1995 at B17.

¹⁹ *Id.* at B74.

²⁰ *See* EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report 15-18.

²¹ *See People v. Stewart*, ROP 5/17/1995 at B78

²² *See* EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report at 18 – 19.

²³ *See* EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report , CPD Report at 5.

²⁴ *See* EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report , CPD Report at 20.

²⁵ *See id.* at 21.

²⁶ *People v. Stewart*, ROP 5/25/1995 at EE5-9.

²⁷ *People v. Stewart*, ROP 5/25/1995 at EE13.

²⁸ *People v. Stewart*, ROP 5/25/1995 at EE19

²⁹ *Id.* at EE35.

³⁰ *People v. Stewart*, ROP 5/25/1995 at EE5-9.

³¹ *People v. Stewart*, ROP 5/25/1995 at EE16.

kicked Green. The statement said that he was asked to carry Green out of the apartment, and that then he brought him to the car of another B.D., Shondell Walker. Stewart's statement says he was given coffee, orange juice, pop, and a sandwich at Area 1. The statement refers to Charles Stewart as "Charles Smith" several times, but only corrects it from "Smith" to "Stewart" on some of those references. ASA Latz and Det. Boudreau maintained that is because Stewart referred to himself interchangeably as Charles Smith and Charles Stewart³², but both stated the alleged pseudonym "Smith" is not documented anywhere else.³³ In Det. Halloran's closing report, authored five days after the interrogation, "SMITH, Charles" is listed as a pseudonym for Stewart.³⁴ Smith does not appear as pseudonym in Stewart's criminal history report³⁵ or a case worksheet³⁶ for the Green murder, both of which list other pseudonyms for Stewart.³⁷

Boudreau testified that Stewart signed each page of the statement, along with himself and ASA Latz.³⁸ He testified that a photograph of Stewart was taken that depicted how he appeared after the statement was taken.³⁹ The Commission was unable to obtain this photograph, but there is nothing in the record to suggest that the photograph reveals evidence of abuse.

The police investigation involved interviews with numerous individuals, many of whom implicated Stewart.⁴⁰ Two of the interviews (of suspects Quincy and Harris) where Stewart was implicated occurred two and a half years after Stewart's arrest; this was *after* Stewart's trial and conviction.⁴¹ The interrogation notes from the interview with suspect Timothy McCoy state that sometime after the beating, B.D. higher-ups ordered shootings or attempted shootings of some of the B.D.'s who were at the beating to keep them quiet about the murder.⁴² Police notes from the interview with suspect Willie Anderson say that Anderson and Shondell Walker drove Green to the hospital. Anderson called it a "good deed."⁴³ There is no mention of Stewart going to the hospital. A hospital employee testified at trial that there were only two individuals in the car in addition to Green.⁴⁴

³² *People v. Stewart*, ROP of 5/25/1995 at EE20-EE21; *People v. Stewart*, ROP of 5/17/1995 at B104-B105.

³³ *Id.* at EE21, *see also People v. Stewart*, ROP of 5/17/1995 at B104.

³⁴ *See* EXHIBIT 2, Closing Report of J. Halloran January 30, 1994, CPD Report 2.

³⁵ *See* EXHIBIT 23

³⁶ *See* EXHIBIT 24

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³⁸ *Id.* at B95.

³⁹ *Id.* at B103.

⁴⁰ Lance Robinson (*See* EXHIBIT 5 Supplementary Report of J. Halloran, February 5, 1994, CPD Report at 4; Rufus Smith (*See* EXHIBIT 6, Supplementary Report of C. Cegielski, August 15, 1994, CPD Report at 4), Michael Sardin (*See* EXHIBIT 7, Supplementary Report of C. Cegielski, March 3, 1994, CPD Report at 2), Sheila Crosby (*See* EXHIBIT 2 Closing Reporting of J. Halloran January 30, 1994, CPD Report at 16), Anthony Horton (*See id.* at 20), Shondell Walker (*See id.* at 21), Quincy Ross (*See* EXHIBIT 8, Additional Report of J. Halloran, May 30, 1996, CPD Report at 4), James Harris (*See* EXHIBIT 9, Supplemental Report of N. Crescenzo, October 14, 1996, CPD Report at 8 - 9), Tim McCoy (*See* EXHIBIT 10, Additional Information Report of J. Murray, April 16, 1999, CPD Report at 3 - 4), Michael Sardin (*See* EXHIBIT 7, Supplementary Report of C. Cegielski, March 3, 1994, CPD Report at 3).

⁴¹ Quincy Ross (*See* EXHIBIT 8, Additional Report of J. Halloran, May 30, 1996, CPD Report at 4), James Harris (*See* EXHIBIT 9, Supplemental Report of N. Crescenzo, October 14, 1996, CPD Report at 9), Tim McCoy (*See* EXHIBIT 7, Supplementary Report of C. Cegielski, March 3, 1994, CPD Report at 3 - 4).

⁴² *See* EXHIBIT 10, Additional Information Report of J. Murray, April 16, 1999, CPD Report at 5.

⁴³ *See* EXHIBIT 11, Supplementary Report of C. Gehrke, February 7, 1994, CPD Report at 2.

⁴⁴ *People v. Stewart*, ROP 5/16/1995 at AA40.

C. Stewart's Version of Events Pre-Trial

Stewart's attorney filed no motion to suppress Stewart's statement, nor did he file a motion to quash arrest, and pre-trial court appearances were apparently not transcribed. However, Stewart's trial testimony alleged that the officers entered his apartment without a warrant or permission to arrest him and officers did not Mirandize him – conditions often associated with such motions.

D. Stewart's Version of Events at Trial

In Stewart's trial testimony, he was not asked about, nor did he ever claim to have been mistreated by detectives during his interrogation. He denied being present or participating in the beating of Green in any way. Stewart claimed he discovered Green lying near the elevator when he came out of his apartment to look for his son, whom he had sent to get cigarettes and was concerned about.⁴⁵ Stewart testified he placed Green in the elevator and brought him downstairs, where he ran into Shondell Walker and Willie Anderson. There he assisted the two in placing Green in Walker's car before continuing to look for his son.⁴⁶ He testified he later saw Boudreau and his partner in the lobby of the building.⁴⁷ He testified he was later arrested when police climbed into his apartment through a window; a CHA officer had his gun drawn.⁴⁸ Stewart testified he never saw the signed confession until he arrived at Cook County Jail, and that the signatures on all five pages were not his.⁴⁹ For signature comparison, Stewart's attorney introduced two other signatures on other documents that Stewart said were his.⁵⁰

On cross-examination, Stewart said that many detectives came in and out of the interrogation room over the 24 hours that he was there, but he was unable to identify specific individuals.⁵¹ He also said he was unsure if the two white men he saw in the lobby of the building on January 23rd were detectives or church representatives doing work in the building; then again said he was sure they were officers.⁵² At the time of his arrest, he was handcuffed quickly, so officers had to finish putting on his second shoe.⁵³ Stewart testified he has never gone by the name Charles Smith.⁵⁴

Stewart also benefited from Crosby's and Bradford's trial testimony, in which they largely recanted their grand jury testimony, claiming police and prosecutors had coerced and coached them.⁵⁵ Prosecutors impeached that testimony through the testimony of ASA Timothy Moran, who read much of their grand jury testimony into the trial record.⁵⁶ Each time Crosby

⁴⁵ *People v. Stewart*, ROP of 5/18/1995, D119.

⁴⁶ *Id.* at D120-121.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at D122.

⁵⁰ *Id.* at D124-125

⁵¹ *Id.* at D132.

⁵² *Id.* at D139-D140.

⁵³ *Id.* at D141

⁵⁴ *Id.* at D155.

⁵⁵ ROP 5/11/1995 at A71-A299; ROP 5/16/1995 at AA48-AA105.

⁵⁶ *Id.* AA106-AA210.

was impeached at trial with her grand jury testimony, she stated that “they” told her what to say.⁵⁷ Crosby testified that she was forced by four to five attorneys, specifically ASA Moran, to memorize false testimony for the proceeding. She said that Detective McDonald threatened to have her children taken by D.C.F.S.⁵⁸ She added “you remember you all took me through a lot in the room back there.”⁵⁹ Crosby was moved into witness protection after her grand jury testimony because she testified against the gang, which she claimed had already threatened her and her family. The defense attorney insinuated at trial during the cross examination of Officer De Rosa (who moved Crosby into witness protection) that there may have been an off-the-books payment by the state’s attorney’s office to Crosby.⁶⁰ Defense counsel asserted that Crosby left witness protection after receiving the payments.⁶¹

During his grand jury testimony, Eugene Bradford offered far fewer details about the crime, but similarly said that coercion induced him and Crosby to provide the information that they did. He claimed that neither he nor Crosby were allowed to sleep after being picked up by police on January 24th until after they testified before the grand jury on the 25th. He testified he and Crosby were “threatened,” and that he was intoxicated when he testified in front of the grand jury.⁶²

E. Trial

Stewart’s trial began on May 11, 1995. Two other alleged B.D. members were co-defendants, Anthony Horton and Willie Anderson. There was a successful motion for a directed finding of not guilty as to Anderson, who made no statements to police, because there was a lack of sufficient evidence connecting him to the crime.⁶³ Stewart was found guilty by the judge on June 1, 1995.⁶⁴

Toward the end of the trial, co-defendant Anthony Horton stopped showing up to court, and his attorney suggested that his disappearance could likely attributed to B.D. members retaliating for testifying against them at trial.⁶⁵ Horton was convicted in absentia and later arrested in Louisiana in 2007 and returned to Illinois to serve his sentence.⁶⁶

F. Claimant’s Post-Conviction Litigation

a. Motion for a New Trial

⁵⁷ *People v. Stewart*, ROP 5/11/1995 at A76.

⁵⁸ *Id.* at A103 (“If they was going to take your kids wouldn’t you say it?”).

⁵⁹ *Id.* at A107.

⁶⁰ *People v. Stewart*, ROP 5/16/1995 at AA18-- AA37.

⁶¹ *Id.* at AA19. Crosby left witness protection after about two months.

⁶² *Id.* at AA82, AA92 – AA94.

⁶³ *People v. Stewart*, ROP 5/18/1995 at D22.

⁶⁴ *People v. Stewart*, ROP 6/1/1995 at G19.

⁶⁵ *People v. Stewart*, ROP 5/25/1995 at EE41; *People v. Stewart*, ROP 5/26/1995 at F4, F20. His wife also testifies that he was receiving threats. *Id.* at F13.

⁶⁶ *People v. Horton*, 2011 IL App (1st) 093335-U, at ¶ 6.

Stewart's motion for a new trial did not contain any allegations of abuse by detectives.⁶⁷ The judge denied the motion, and Stewart was sentenced to seventy years in prison.

b. Direct Appeal

Relief was denied by both the appellate court in 1996 and Supreme Court in 1997.⁶⁸ Coercion was not raised in Stewart's direct appeal.

c. Post-conviction Petition

In 1999, the Circuit Court of Cook County denied Stewart's post-conviction petition for an evidentiary hearing because he missed filing dates. This denial was affirmed by the Appellate Court in 2001.⁶⁹ Coercion was not raised in the petition.

G. Co-Defendant Allegations of Torture and Coercion

In addition to Sheila Crosby's claim that she was coerced by the detectives in the case, several co-defendants and suspects claim they were also coerced. Michael Sardin, another B.D., implicated co-defendant Anthony Jaynes, in Sardin's grand jury testimony. Sardin later recanted this at trial, claiming that he was beaten by police and forced to testify in front of the grand jury.⁷⁰

Co-defendant Deshawn Gardner also alleged police abuse in post-conviction proceedings. In 2013 the Illinois Appellate court reversed the second-stage dismissal of Gardner's post-conviction petition based, in part, on abuse claims. The appellate court relied on Sheila Crosby's statements at Gardner's trial that she only implicated Gardner in front of the Grand Jury because police held her "incommunicado" for two days and the detectives threatened to charge her as an accessory. She stated that Detective McDonald threatened to have her children taken away, which she also alleged in Stewart's trial.⁷¹

Gardner's appellate panel also relied on statements by witness Timothy McCoy, who said that police wrote a handwritten statement implicating Gardner with McCoy's signature on the bottom of each page. At trial, McCoy denied making the statement and claimed that police had supplied all the information and that it was already written when it was shown to him (McCoy). McCoy claimed that he was choked in front of ASA Jennifer Coleman and told he would be sent to the hospital/jail if he did not "agree to" the statement. McCoy said at trial that he only initialed corrections within the statement when instructed to do so by the officers. McCoy was unable to identify the individual detectives; he simply referred to them as "homicide."⁷²

⁶⁷ *People v. Stewart*, ROP 6/1/1995 at I-4.

⁶⁸ *People v. Stewart*, 285 Ill.App.3d 1094 (Ill.App. 1 Dist. 1996); *People v. Stewart*, 689 N.E.2d 1129 (Ill. 1997).

⁶⁹ *People v. Stewart*, 285 Ill.App.3d 1094 (Ill App. 1 Dist. 1996); *People v. Stewart*, 329 Ill. App. 3d 933, 604 (Ill. App Ct. 2001).

⁷⁰ *The People of the State of Illinois, Plaintiff-Appellee, v. Anthony JAYNES, Defendant-Appellant.*, 1997 WL 33762474 (Ill.App. 1 Dist.), at 10.

⁷¹ *People v. Gardner*, 2013 IL App (1st) 110341-U, at ¶ 11.

⁷² *Id.* at ¶ 13.

At Gardner's trial, the defense implied that witness Lance Robinson, whose trial testimony placed Gardner at the apartment, should be disbelieved because it was the product of police coercion and Robinson's desire to avoid being charged as an accessory.⁷³

The appellate court reversed the lower court's denial of Gardner's post-conviction petition that claimed that his due process rights were violated when the trial court used the testimony of Sheila Crosby and handwritten statement of McCoy, both of whom were allegedly coerced by Detectives Boudreau and Halloran.⁷⁴ The defense included affidavits of Nicholas Escamilla, Malik Taylor, Arnold Day, Kylin Little, and Jason Miller, all of who claimed that Boudreau and Halloran used similar techniques (to the techniques in Gardner's case) to coerce statements from individuals.⁷⁵

Co-defendant Shondell Walker has also filed a claim with TIRC. He does not allege torture against himself, but claims that individuals who implicated him were tortured into confessing/implicating him, and that detectives fabricated their testimony that Walker made an oral statement to police implicating himself in the crime. Walker also has a post-conviction petition pending, in which he introduced new evidence (previously unavailable to him), including an affidavit where Michael Sardin recanted his testimony and a videotape of Sheila Crosby (that was introduced at DeShawn Gardner's trial) where she claimed that she was threatened by the ASA into testifying in a certain way.⁷⁶

H. Allegations to TIRC

A. TIRC Claim Form (See EXHIBIT 1)

Stewart filed a claim form with the Commission on or about May 28, 2014.⁷⁷ In it, Stewart claimed that Detective Boudreau slapped and hit him on January 24th and 25th in 1994. He wrote that Boudreau compared the torture of Stewart to the beating of the victim, Stephen Green.⁷⁸ Stewart claimed that he signed a police report late in the day on the 25th after being told he could go home if he signed it. He wrote that he signed so that he would no longer be hit.

B. Interview with Stewart

Stewart told Commission staff that eight or nine officers came to arrest him with their guns out, entering through a back window. He did not remember being told anything about the arrest, or being read his Miranda rights.

⁷³ *Id.* at 3, 12.

⁷⁴ *Id.* at 74 ("substantial showing of a due process violation sufficient to advance the postconviction proceedings thereon to its third stage.") at ¶ 80.

⁷⁵ *Id.* at ¶ 78.

⁷⁶ See EXHIBIT 21, Affidavit of Shondell Walker from May 5, 2001 at 2. .

⁷⁷ Received by TIRC June 2, 2014.

⁷⁸ The claim form states that Boudreau "[w]as slapping me a lot, and hitting me on my arms and legs saying ['is this how you beating Mr. Green[.] [D]o you see how this feel[?]' and on the 25[th] he came back and started doing it again asking me[, 'do I like it [?]'and saying ['this is what gangbanger do.'"]

Stewart said that he was handcuffed to a chair in an interrogation room at Area 1. He said that the first detective (Officer 1) who came into his apartment to retrieve him also entered his interrogation room first, grabbed his mouth, put him against a wall, and demanded Stewart tell him what happened. Stewart referred to this individual as the “detective,” contrasting him with “men in suits” that continued the interrogation. This detective then left and returned with another officer in a suit (Officer 2) 15 minutes later. Later, Officer 2, and a second suited officer (Officer 3) kicked him five times on his butt. He stated that Officer 3 held Stewart in a full nelson wrestling hold while Officer 2 hit him with a phonebook and flashlight or club. He stated that the officers used language that insinuated they knew details of the crime, such as “We’re going to show you how it feel to be a in a full nelson.” Another time, the two suited officers returned, and one of them hit Stewart in the face repeatedly, alternating hands, and the other used the heel of his fist to hit Stewart on the side of the head. Eventually one of the suited officers came in with an assistant state’s attorney. After the ASA left, the suited officers came back in and one grabbed and twisted Stewart’s testicles.

Stewart described being put in a full nelson again the following day, and then hit on the knee with a flashlight by the two suited officers. After not providing the officers with information, Stewart said the officers left him alone for a long period of time before returning and beating him in the stomach with a phone book and flashlight while again holding him in a full nelson. He was then hit again by Officer 3 with a phone book. He said that he signed a document brought to him to avoid being hit, but that the assistant state’s attorney did not return. He said that the officers told him that he would be able to go home. He said that he only signed a one-page document, and that he did not initial anywhere on the document. He said that this document was not the confession statement used to convict him.

He described the two suited officers as older white men. He said Officer 3 put Stewart into the full nelson holds and Officer 2 hit him with the phone book and flashlight. He said that Officer 2 was also the one that grabbed his testicles.

Stewart told TIRC staff said that during the medical exam at Cook County Jail, he did not share that he was abused because he was scared. He said that the first person he talked to about the abuse to was his mother, and the next individual was his public defender. He fired the public defender and hired a private lawyer, to whom he relayed the abuse allegation as well. He said that he left it in his lawyer’s hands to deal with the trial strategy, and that the lawyer and Stewart decided to try to nullify the statement with a handwriting expert.⁷⁹ Stewart said he didn’t bring up the abuse with his attorneys during the appeals because they never spoke.

Contrary to his trial testimony, Stewart told Commission staff that *he* accompanied Green to the hospital with Shondell Walker and Willie Anderson. He did not remember testifying that at trial that he said he did not go to the hospital. Other witnesses at trial testified that only *two* men dropped Green off at the hospital.⁸⁰ Stewart described the drop-off to Commission Staff

⁷⁹ No such expert ever testified. At Stewart’s post-trial motion hearing, Stewart’s attorney indicated that the expert was supposed to be at the post-trial motion to introduce new evidence, but had not shown up. *See People v. Stewart*, ROP of October 6, 1995, I4.

⁸⁰ *People v. Stewart*, ROP 5/16/1995 at AA37. Robert Earl Harris, a hospital house housekeeper, testified that two men only dropped off Green at the hospital and that he, Harris, helped Green out of the car.

saying, “we did a good deed for the day and we left,” which is the same language that a witness used in describing what one of the men said when Green was dropped off at the hospital.⁸¹ Shondell Walker testified at his trial that that he and one other man drove Green to the hospital the night of the beating. He stated that he told the nurse, “I did my good deed for the day.”⁸²

Stewart, contradicting his trial testimony, denied to Commission staff that he saw two white officers at the apartments the night of the murder. He also claimed that it was his niece’s birthday the night of the Green’s murder, whereas at trial he said that it was his son’s birthday.

Stewart was “fairly confident” during his interview of his identification of Boudreau as Officer 2, whereas at trial he said that he could not identify any of the individuals that came in and out of the interrogation room. When asked why he didn’t identify Boudreau at trial (who had testified before Stewart testified), he said he pointed out Boudreau to his lawyer.

I. **Further TIRC Investigation**

a. Interview with Dennis Sherman

TIRC investigators interviewed Stewart’s trial defense attorney, Dennis Sherman.⁸³ Sherman said that he could not remember if Stewart made any allegations about being tortured or abused by the officers. He did say, however, that even if Stewart had mentioned abuse to Sherman, he would not have filed a motion to suppress the statement. Specifically, he said that it would have been pointless because “no judge would believe it” when there was a signed confession where the defendant stated that he had been treated well and fairly. He said that it “would have been a waste of [his] time” to file a motion to suppress. He said that in his 48 years as a defense attorney, he had never had a judge suppress a written, signed statement when the defendant later claimed abuse. He said that he believed that it was impossible to know what occurred in police stations, saying, “It’s like being in North Korea, I believe.”

Sherman went on to say that Judge Singer, a former public defender, had presided over the trial. In Sherman’s experience, former public defenders, who were often lied to by clients when they were attorneys, never believed defendants once they became judges.

Sherman shared that he did “think [Stewart] was” abused. He shared, “I have no exact memory,” of whether Stewart alleged abuse, but “something happened to make him make this confession,” when there was no other significant evidence with which to convict him.

Sherman also corroborated statements made by Stewart that it had been the defense strategy to claim that the confession was a forgery. He did not believe that Stewart had made the confession.

After first returning the Commission’s calls, Sherman did not return further calls after staff sent him transcripts in an effort to refresh his memory of the case.

⁸¹ See EXHIBIT 20, Undated General Progress Report of JH, CPD Report.

⁸² See EXHIBIT 22, *People v. Walker*, Appellate Opinion (1-96-0636 December 26, 1996) at 7.

⁸³ Report of August 18, 2017 interview of Dennis Sherman. See EXHIBIT 12.

Sherman was disbarred on consent in 2017 by the Illinois Attorney Registration and Disciplinary Commission as a result of complaints by four individuals who alleged that Sherman used money in their client trust account without authorization.⁸⁴

b. Interview with Bobbie Stewart-Warren

TIRC investigators interviewed Stewart's sister, Bobbie Stewart-Warren, a person whom Mr. Stewart had listed on his TIRC claim form as a witness who might corroborate aspects of his claim.⁸⁵ Stewart-Warren claims that the night of the beating of Green, her brother was at her apartment for her daughter's birthday party. She claimed to be present during Stewart's arrest. She said that on the day of the arrest, her mother (now deceased), Charles Stewart, Stewart's girlfriend Deloise Causey, and herself went downstairs where a television journalist told them police had a suspect in Green's murder. The group returned to Stewart's apartment. Stewart-Warren said that police started banging on the door twenty minutes later, and barged in. She said that the officers threw Stewart to the floor, put a knee on the back of his neck, grabbed and twisted his arms behind him and put handcuffs on him.

Stewart-Warren said that she, her mother, and her two other brothers followed the officers and Stewart to 51st and Wentworth. She said that they were not allowed to see Stewart for 4 hours, but when they did, he had a swollen face and scratches on his neck. Stewart told them police were trying to make him confess to Green's murder, but Stewart told his family he was refusing to do so because he was innocent.

Stewart-Warren claimed that there was barbecue sauce on Stewart's clothes that led the officer to think it was blood and have the clothes taken for testing.

Stewart-Warren said that she and her mother stayed for 48 hours before being allowed to see Stewart again. She said that marks were still visible on him at that time.

Stewart-Warren said that at the jail 4 or 5 days later, Stewart told her and her mother that he had been hit and choked. He said that when he would tell the officers that he wasn't at the beating of Green, he would be hit. He eventually signed a "blank piece of paper" to stop the beating. "Those were his exact words," Stewart-Warren said.

Stewart-Warren said that her brother had been handcuffed to the wall and forced to sleep on the floor. She said that the handcuffs were so tight that there were marks that she saw on his wrists. She said that he was given no water.

Finally, Stewart-Warren said that her mother had filed a report about the abuse, but that she did not have any details about to whom it had been reported. A TIRC subpoena found no complaints filed by Stewart or his mother to the Office of Professional Standards.

⁸⁴ August 30, 2016 ARDC Complaint re Dennis Hugh Sherman and September 22, 2017 Statement of Charges Allowed by the Illinois Supreme Court and Imposing Discipline on Consent *See* EXHIBIT 16.

⁸⁵ Report of April 20, 2018 interview of Bobbie Stewart-Warren. *See* EXHIBIT 13.

J. Pattern and Practice Evidence

Numerous individuals have claimed that Detectives Boudreau and Halloran physically coerced them into confessing to crimes. Allegations involve methods of torture that include hitting, punching, choking, slapping, and being hit with a flashlight through a phonebook. One complainant alleged that the detectives threatened to have his girlfriend's children taken away if he did not confess. A number of complaints come from persons who gave confessions to crimes but were later either acquitted, shown to be provably innocent or likely innocent by DNA testing.

Officers Daniel McDonald and Sergio Rajkovich were the arresting officers. Both have been the subject of civil lawsuits. A plaintiff alleged that Rajkovich suppressed evidence in a false confession case where the plaintiff was awarded \$2 million.⁸⁶ McDonald was named in a false arrest and malicious prosecution complaint.⁸⁷ TIRC did not obtain CPD histories of complaints against McDonald and Rajkovich.

a. John Halloran (see EXHIBIT 14)

Harold Hill claimed in a deposition that during an investigation Boudreau and Halloran physically coerced his confession to the rape and murder of Kathy Morgan. Peter Williams and Dan Young also confessed. Williams was shown to have been incarcerated when Morgan was killed and charges were dropped. Young and Hill were convicted, but later DNA testing showed someone else's DNA under Morgan's fingernails. The state dropped all charges and Hill eventually settled a lawsuit for \$1.25 million. Hill insisted Halloran and Boudreau each pay \$7,500 out of their own pockets as part of the settlement.

Derrick Flewellen alleged that Halloran and Boudreau physically coerced his confession to the June 1995 murders of Sherry Hunt and Lovie Ford (with regard to Ford, he confessed that he witnessed another individual rape and murder her). Specifically, he alleged that Halloran hit and kicked him, and that Boudreau choked and punched him in the face and head. The case against Flewellen collapsed, however, when physical evidence did not support the confession he gave to police. Flewellen was acquitted after a bench trial, and DNA testing linked Ford's death to serial killer Hubert Gerald. Following a civil lawsuit, Flewellen settled with the city for \$250,000.

Frederick Ewing and Darnell Stokes alleged that they were beaten by Boudreau and Halloran, leading to their false confessions to murder. Ewing claimed to being hit with a baton in the chest and stomach. Stokes claimed to be choked and struck with a stick. Both men were acquitted at trial. The district court denied the City of Chicago's motion to dismiss Ewing's civil suit. There was a settlement for an undisclosed amount.

Tyrone Hood and Wayne Washington alleged in lawsuits that physical coercion by police led to their confessions. Their lawsuits name Halloran and Boudreau as defendants, but do not specify their exact conduct. The lawsuits are pending. The state's attorney dropped charges against Hood and Washington after the victim's father was convicted of other murders with

⁸⁶ Maurice Possley and Gary Washburn, "Deal on wrongful conviction," *The Chicago Tribune* (Oct. 31, 2006).

⁸⁷ *McDorman v. Smith*, 437 F. Supp. 2d 768, 772 (N.D. Ill. 2006).

highly similar characteristics to the murder at issue in Hood and Washington's case.

Nevest Coleman and Derrell Fulton alleged in lawsuits that a detective punched them in their faces to help secure their confessions to the murder of Antwinica Bridgeman. The lawsuits alleged Halloran and Boudreau and other detectives were aware of the punching. Their convictions were reopened in 2016 for DNA testing; DNA evidence suggested a different assailant committed the murder. Both men were granted certificates of innocence and have pending lawsuits.

b. Kenneth Boudreau (see EXHIBIT 15)

Several complaints against Boudreau, where defendants confessed to crimes that they were later acquitted of, shown to be provably innocent, or shown to be likely innocent by DNA evidence, are mentioned above in Halloran's complaints.

Further, Boudreau was accused by defendant Vincent Thames of keeping him in a room without sleep for two days to induce a confession. Thames also alleged he was continually handcuffed and that a phonebook was placed on his chest and he was hit with a flashlight through the phonebook. Thames and three co-defendants (Michael Saunders, Harold Richardson and Terrell Swift) confessed and were convicted of the murder of Nina Glover. A fifth man's confession (Jerry Flincher) was ruled illegal and excluded at a suppression hearing, causing prosecutors to drop charges. Each convicted man was eventually exonerated and received a certificate of innocence after DNA testing implicated someone suspected of being a serial rapist. On December 13, 2017, Chicago's City Council approved a \$31 million settlement to be divided between the four men.

Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d).

“‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.” 775 ILCS 40/5(1) (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.⁸⁸

The Commission was not asked by the General Assembly to conduct full, adversarial,

⁸⁸ *See* 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. *See* 2 Ill. Adm. Code 3500.385(e).

evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as requiring it to determine whether there is sufficient evidence of torture to merit judicial review.⁸⁹

Analysis

A) Jurisdictional Analysis

“Tortured Confession” is not defined by the statute, but by Illinois Administrative Rule Title 20, Part 2000.10:

“Tortured Confession” includes any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture.

Here, Stewart claims that a fabricated statement was created shortly after an interrogation that he claims included torture, bringing the confession at issue within TIRC’s jurisdiction, even though he denied making it.^{90 91}

B) Factors supporting claim of torture

i. Claims of coercion by witnesses and co-defendants

⁸⁹ See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of “probable cause.” That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission’s duties: “[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. * * * What the Commission did was analogous to finding that a postconviction petition could advance to the third stage.” *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

⁹⁰ See also, *In re: Claim of Jaime Hauad*, 17-18 (finding claim of torture and denial of making of statement within TIRC’s jurisdiction).

⁹¹ The courts, too, allow an allegation of a coerced confession to be considered when a defendant has simultaneously or subsequently alleged coercion. “The law is settled that a defendant’s assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed.” *People v. Wrice*, 2012 IL 111860, ¶53, citing *Ashcraft v. Tennessee*, 322 U.S. 143, 152 n.7 (1944) (“The use in evidence of a defendant’s coerced confession cannot be justified on the ground that the defendant has denied he ever gave the confession.”). *But see People v. Hoble*, 182 Ill.2d 404 (1998) (rejecting postconviction claim of new evidence of police brutality at Area 2 would have aided defendant where, at trial, he alleged the statements were fabricated. *Wrice* subsequently narrowed *Hoble* significantly, however. See also *People v. Norfleet*, 29 Ill.2d 287, 290, citing *Lee v. Mississippi*, 332 U.S. 742 (1948) (noting the U.S. Supreme Court’s reversal of a conviction where a defendant at trial alleged no confession had been made, and then on appeal alleged that it was coerced. The *Lee* court wrote, “A conviction resulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process.”

Both Crosby and Bradford testified at trial that they were coerced into making statements that implicated Stewart. Crosby's statements that the officers threatened to take her children away are consistent with other threats alleged to have been made by CPD detectives. On the other hand, Crosby was Stewart's aunt; she would have also had an incentive to recant her testimony implicating him. Gang coercion and threats to kill her children could have also caused her to recant at trial her testimony that implicated Stewart before the grand jury. Nonetheless, Crosby's and Bradford's claims and the claims of torture and coercion by other witnesses (McCoy, Sardin, Robinson) and co-defendants (Gardner and Walker) bear some consideration.

ii. Pattern and Practice Evidence

There is substantial pattern and practice evidence of abuse allegations against Boudreau and Halloran. Exonerations and civil settlements bolster the credibility of this evidence. This factors weighs in favor of referral.

iii. Questionable State Testimony Damages its Credibility

Stewart's testimony on the nature of the arrests contrasts with that of the arresting officers. Both parties have flaws in their credibility. In addition to pattern and practice evidence on the arresting officers, Det. McDonald's account of the arrest claims Stewart voluntarily chose to put on incriminating shoes and a jacket bearing blood prior to volunteering to go to the police station. More likely Stewart was arrested in his home and the clothes seized. A potentially illegal warrantless arrest by a detective involved in investigating the case might suggest that torture was more likely to have occurred.

Additionally, Detective Boudreau and ASA Latz' testimony that Stewart went by the pseudonym Charles Smith is highly suspect. Ample evidence from previous TIRC investigations suggest errors were often deliberately inserted into written confessions in order to bolster their purported voluntariness by having the defendant initial the correction of those errors.⁹² Consistent with that practice, "Smith" is corrected to "Stewart" at least twice in Stewart's statement, complete with his approving initials. However, rather than Smith being an actual pseudonym for Stewart, it appears more likely that the "Smith" pseudonym tale was concocted to explain Latz's failure to correct *all* the "Smith" errors inserted into the confession.⁹³ Smith's arrest record⁹⁴ and police worksheets of the case⁹⁵ list other pseudonyms for Stewart, none of them being "Smith," suggesting this testimony was false, and damaging the state's credibility.

C) Factors detracting from claim of torture

⁹² See *In re Claim of Jerry Mahaffey* at 25, summarizing sworn testimony of former Cook County Assistant State's Attorney Irv Miller that it was policy to insert insubstantial errors into suspect statements; see also *In re Claim of Mark Maxson* at 22, summarizing interview of former Cook County Assistant State's Attorney Carlos Weeden in which he indicated it was protocol to insert minor errors into suspects' handwritten statements in order to have the suspect correct the errors and affirm he or she had read it and agreed with the substance of it. Both determinations are available at: <https://www2.illinois.gov/sites/tirc/Pages/TIRCDecision.aspx>

⁹³ See Exhibit 4, signed statement of Charles Stewart.

⁹⁴ See Exhibit 23.

⁹⁵ See Exhibit 24.

i. Lack of Prior Documented Claims of Torture

Stewart never documented any allegations of torture before raising it with TIRC.

In fact, Stewart’s attorney, Sherman, argued at trial that Stewart had not signed the confessions statement at all. He argued not that Stewart had been tortured into confessing, but that he had not provided information for the statement at all. This defense was maintained on appeal. Although Sherman’s statement to investigators that he would not have filed a motion based on torture, even if it had been alleged, allows for the possibility that Stewart alleged torture to Sherman, it also equally allows for the opposite possibility: that Stewart never claimed torture to Sherman. Overall, the lack of a motion to suppress or other prior documented claims of torture weigh against referral.

ii. Lack of Physical Evidence of Torture

There is no physical documentation in the form of photographs or medical reports suggesting that torture may have occurred. ASA Latz did not indicate that he thought Stewart had been abused. In addition, the Polaroid photograph of Stewart introduced into evidence is never suggested in the record to document any signs of injury. This factor weighs against referral.

iii. Inconsistent Statements by Stewart Damage his Credibility

Stewart made several inconsistent statements during the course of the investigation, damaging his credibility. For instance, at trial he claimed to have seen two officers the night of the murder. During the TIRC interview, he claimed that the two men he saw were not officers, but two “white Caucasians” that he knew to be a security guard and a friend of the guard.

His statements regarding his involvement after the beating of Green are more troubling. He testified at trial (consistent with notes made by the officers during the investigation and testimony by the driver) that he merely helped Green into a car and then returned to his apartment. A hospital employee testified at trial that only two individuals brought Green to the hospital. However, during the TIRC interview he was confident that he accompanied Green to the hospital. The number of prior inconsistent statements by Stewart and others suggests that he was lying to TIRC, damaging his credibility. But the alternative possibility, that he lied at trial, also damages his credibility. TIRC notes that at trial, Stewart’s testimony at trial initially appeared to agree that he had gone to the hospital, but he quickly withdrew that statement and said he had stayed to look for his missing son – a detail he had already committed to a moment earlier on the stand.⁹⁶

Furthermore, Stewart claimed at trial that he did not recognize any of the men that came in and out of his interrogation room, yet was confident during the TIRC interview that Boudreau was one of the officers that abused him. Boudreau had testified before when Stewart testified to this at trial. Thus, Stewart was either mistaken or lying that he did not recognize Boudreau at

⁹⁶ People v. Stewart AT 1748 (Q: “And did you take him to the hospital? A: Yes—well, let me recall...no, I continued to look for me son.”).

trial, or he was lying or mistaken during the TIRC interview. These inconsistencies are not dispositive, but damage Stewart's credibility, weighing against referral. They also allow for the possibility of later fabrication by Stewart once Boudreau's other alleged abuse became more widely publicized in newspaper articles in 1997 and 2001.⁹⁷

Stewart also varied on whose birthday party he was attending the day of the murder – his son's or his niece's. Additionally, his more recent recollection that it was his niece's party (as opposed to his son's, as he said at trial), coincides with his sister's interview with TIRC – suggesting that Stewart may have coordinated with family members to fabricate evidence favorable to him, and again damaging his credibility.

iv. Interview with Bobbie Stewart-Warren

Stewart's sister claimed to have witnessed the arrest, been at the police station during the interrogation, seen markings on Stewart's face and neck as a result of torture, and been told by Stewart that the officers beat him. There are several discrepancies between her account and Stewart's account both at trial and during the TIRC interview. He claimed to have been asleep, with only his girlfriend home, when the police came in through a window. Stewart-Warren claimed that she and her mother were both there, and that the officers barged in through the front door. There was nothing in Stewart's account about speaking with television journalists twenty minutes prior to being arrested. Stewart-Warren did not describe the torture in the same way that Stewart did during TIRC's interview him. Stewart-Warren said nothing about Charles Stewart being kicked, being put in a full nelson by the officers, being hit with a phone book and flashlight, or having his testicles twisted.

There were several reasons to doubt the credibility of Stewart-Warren, in addition to the fact that she is a relative of Stewart. She claimed to have been allowed to see Stewart at Area 1 after 4 hours, and to have stayed at Area 1 for 48 hours overall. Both of these statements seem implausible. Additionally, she claimed the blood on Stewart's clothes was barbecue sauce, a fact clearly contradicted by lab tests showing the presence of human blood on those clothes. Again, some collusion between Stewart and others to manufacture evidence favorable to him seems likely, and damages both his credibility and Stewart-Warren's.

v. Testimony about Gang Intimidation of Witnesses Make Witness Recantations and Abuse Claims Less Trustworthy

Sheila Crosby claimed at trial that she was threatened by B.D.'s. These threats led to her being placed in witness protection. While Crosby recants the part of her testimony implicating Stewart at trial, the threat of B.D. retaliation makes her recantation less trustworthy, and signals the possibility that defendants manufactured evidence favorable to them. That would make more likely the possibility that Stewart is now manufacturing claims of torture favorable to him. This weighs against referral.

⁹⁷ Michael Minder, "Opening the Torture Files," *Chicago Reader*, June 12, 1997; Possley, Mills, & Armstrong, "Veteran detective's murder cases unravel," *Chicago Tribune*, December 17, 2001.

D) Other Facts not Clearly Favorable or Unfavorable

i. Claim form and interview

Stewart's claim of torture at the hands of Boudreau and Halloran is consistent with many other torture claims made against the officers. The detail about being hit with a phonebook and flashlight is consistent with what other torture claimants allege. On the other hand, Stewart did not describe any of this abuse in a formal way until the TIRC interview, over twenty years after the interrogation occurred.

Stewart and witness Tim McCoy (from Gardner's trial) both claim that their statements were manufactured by police and not written by them. McCoy claimed that he signed and initialed when the police demanded it. This would be somewhat consistent with what Stewart described, except that Stewart claimed that he never signed the statement (and the defense claimed at trial it was not his handwriting).

ii. Interview with Trial Defense Attorney Sherman

Stewart's trial attorney's belief that Stewart was abused is not supported by any specific memories of allegations of torture made by Stewart, nor by any other objective evidence. Sherman claims that he would not have filed a motion to suppress statement because it would have been pointless. Sherman also did not file a motion to quash arrest in light of the warrantless arrest that Stewart claimed occurred. The fact that he did not file the latter motion to quash arrest bolsters Sherman's statement that he was not filing motions where appropriate. However, Sherman's credibility is limited by the circumstances of disciplinary action by the Illinois Bar. In addition, Sherman's belief in torture in this instance is a very subjective one, and he cannot point to any objective evidence to support it. This factor does not support or detract from Stewart's torture claim.

E) Weighing of the evidence

Admittedly, Boudreau's and Halloran's backgrounds and allegations of coercion by Sheila Crosby, Eugene Bradford, and various other co-defendants and witnesses bear consideration.

However, these pieces of evidence are insufficient to overcome: (1) Stewart's failure to raise torture allegations in any court filings at or near the time the torture allegedly occurred; (2) Stewart's failure to make any documented claim of torture in any appeal or post-conviction petition prior to his TIRC claim; (3) multiple inconsistent statements made by Stewart regarding the investigation; (4) flaws in the credibility of Crosby, Sherman, Stewart-Warren; and (5) the lack of any physical evidence of torture. TIRC has previously denied claims of torture where the only suggestion of it comes only in the form of Pattern and Practice evidence against officers and from unreliable claimants and witnesses in a late outcry.⁹⁸ Because Stewart's allegations arise so

⁹⁸ See *In re: Claims of Rickey Robinson; Eugene Horton*

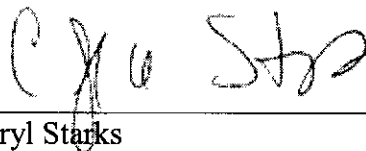
late, and with so little credibility and evidentiary support, the Commission cannot find sufficient credible evidence of torture to merit judicial review.

CONCLUSION

The Commission finds that there is insufficient credible evidence of torture to refer this matter to the Circuit Court.

The Commission dismisses Mr. Stewart's claim and instructs its Executive Director to notify Mr. Stewart of the dismissal and of his right to judicial review under the Illinois Administrative Review Law.

Dated: May 16, 2018



Cheryl Starks
Chair
Illinois Torture Inquiry and Relief Commission